IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9590 of 2007(N)

PETITIONER:

ARAVINDH.S.ANAND, ASSISTANT PROFESSOR
DEPARTMENT OF RADIO THERAPY, MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.M.S.NISHAD

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, DEPARTMENT OF HEALTH AND
FAMILY WELFARE, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

3. THE PRINCIPAL MEDICAL COLLEGE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI A. J. VARGHESE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 9590 OF 2007 N

Dated this the 21st March, 2007

JUDGMENT

Petitioner challenges Ext.P8. Ext.P8 is an order passed by the Government rejecting the request made by petitioner in Ext.P6 which was directed by this Court to be considered by Ext.P7 Judgment. Petitioner has completed M.D. in Radio Therapy. As per the impugned Order it is found that there are nine posts of Assistant Professors lying vacant in the Department of Radio Therapy in various Medical Colleges and there are only three qualified persons available who are fit for promotion in the Select List. In Ext.P8, it is noted that the request of the petitioner was to retain him in the Medical College, Thiruvananthapuram. It was found that it cannot be considered at present as there are no vacancies of Assistant Professors in the Department of Radio Therapy at the Medical College, Thiruvananthapuram. Apparently, the petitioner made a request to accommodate him in the Department of Radiation

Physics in which, according to petitioner, he is doing Ph.D. But, the Government took note of the fact that there are nine posts of Assistant Professors lying vacant in the Department of Radio Therapy in various Medical Colleges, and as already noted, there are only three qualified hands. Shri R. Rajasekharan Pillai, learned counsel for petitioner attacks the order on the ground that it is opposed to Ext.P2 Judgment and also Ext.P3 recommendation by the Principal. In Ext.P2 Judgment, in fact, this Court found that if at all there is any lack of facilities, Government shall provide it, so that the Medical Council does not take any action for de-recognition of the degree awarded by the Medical College in the Subject "Radio Therapy". The Writ Petition itself was dismissed subject to the observation as above regarding the liability of the Government to provide facilities, if any found lacking, to the Department of Radio Therapy. Therefore, in the light of the fact as brought out in Ext.P8 that there are nine posts of Assistant Professor in Radio Therapy lying vacant and there are only three qualified hands in the

select list, it is quite clear that the order cannot be said to be in violation of Ext.P2. It is very clear that Ext.P2 relates to Radio Therapy, and not to the Department of Radiation Physics.

2. As far as Ext.P3 is concerned, no doubt, it is true that the Principal has written to the Secretary stating that the petitioner may be accommodated in the post of Assistant Professor in Radiation Physics as the PIPMS Head has already given no objection for the same. It is true that there is no specific reference as such in Ext.P8. But, the question is what is the ambit of judicial review in these matters. On the admitted facts, it is clear that the question involved in this case is where the employee should be posted. I would think, in the light of the admitted fact that there are nine posts of Assistant Professor in Radio Therapy and the petitioner is one of the three who are available, it cannot be said that the decision of the Government to post him as Assistant Professor in Radio Therapy which apparently in the direct line of promotion, is so vitiated so as to warrant interference. Apparently, even after providing all the

three qualified hands, there is a deficit of six qualified incumbents. If the Government takes a view, in such circumstances, to appoint the petitioner on the said ground, I would think that it should not be open to this Court to interfere in the matter. Accordingly, the Writ Petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

kbk.